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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,950	12/14/2003	Jeffrey D. Davies	111803.P001	3725
<div>7590 Mark S. Peloquin PELOQUIN, PLLC Suite 4100 800 Fifth Avenue Seattle, WA 98104-3100</div>			<div>EXAMINER SPISICH, GEORGE D</div>	
			<div>ART UNIT 3616</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 04/28/2009</div>	<div>DELIVERY MODE PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/735,950	<b>Applicant(s)</b> DAVIES, JEFFREY D.	
	<b>Examiner</b> GEORGE D. SPISICH	<b>Art Unit</b> 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 18-24, 26-29, 44, 45 and 47-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-24, 26-29, 44, 45 and 47-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION*****Election/Restrictions***

Applicant has argued that the method claims (claim 44,45,47 and 48) are related to Invention III which was elected in the Response of 2/14/06 and has stated that they are related and should not have been grouped separately and previously withdrawn. This argument is persuasive and, at this time, Examiner is rejoining method claims 44,45,47 and 48. Furthermore, Examiner would like to point out that the independent claims 18+ and 26+ now have method limitations and are unnecessary in view of rejoined claims 44+ and since the final product has been addressed in this Office Action and method limitations are not given patentable weight in apparatus claims.

***Drawings***

Figures 14A-22D filed November 17, 2008 are not accepted. These Figures are considered new matter. While they are sufficient to admit as evidence for Applicant's arguments, they are not accepted as additional Figures for the specification.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18-24,26-29,44,45,47 and 48 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The newly added lines 2-11 relating to the Figures submitted on 11/17/08 in claims 18,26 and 44 are considered new matter and should be cancelled.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18-24,26-29,44,45,47 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear to claim structure in an Apparatus claim that is only related to the modifying or method of conversion. Examiner considers claims 18 and 26 to be a method claim and consistent with Claim 44.

It is unclear to refer to Figures as in claims 18,26 and 44. These lines should be cancelled.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18,19,21-24,26-29 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pestotnik (USPN 6,182,784) (provided in Applicant's IDS) in view of Hasegawa et al. (USPUB 2003/0070848) and further in view of Grayson (USPN 5,247,845) and Yokoyama (USPN 5,144,852)

Examiner is giving limited weight to the portions of the claim that are mentioned in the 112 rejection above. Pestotnik discloses an ATV having a transmission, the transmission having a shaft and a housing and further having a power takeoff shaft (56a) that transfers energy to an external device and extends through a hole (inherent) in the transmission case. Pestotnik discloses a sub-transmission (see col. 6, lines 51-67) that includes a normal, low and "super" low speed/gear position. Furthermore, it is stated that the device is placed in a neutral position.

However, Pestotnik does not disclose power being transferred from the engine to the transmission without a belt or the transmission shaft or having a releasably connectable shaft extension that is coupled to the transmission shaft and "accessible" through an opening in the transmission housing. Pestotnik in view of Hasegawa et al. and Grayson do not specifically disclose a sub-

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transmission plate providing a neutral position as claimed. Although Pestotnik discloses a sub-transmission and a plurality of shift positions (col. 6, lines 51-67), Examiner is not relying on this detail to be a transmission plate containing a position.

Hasegawa et al. discloses the well known aspect of using an engine, a transmission and a PTO where the power from the engine is transferred to transmission shaft without a belt. Using a belt transmission is not the only type of transmission known or that would be compatible with the arrangement of Pestotnik. Any transmission known such as that shown in Hasegawa et al. (even though on a farm tractor) would be analogous and easily adapted for use on an ATV.

Grayson discloses a power takeoff arrangement having a transmission/drive shaft (12) and an opening through which a transmission shaft extension (30) is releasable coupled thereto. The power takeoff point includes a flange (between seals 22 and 26). Providing a shaft member that transitions to a driven device is a well-known feature in transmission devices.

Yokoyama (Fig. 1) discloses a shift plate having a plurality of positions. The relevance is merely in a providing a shift plate having position.

With respect to claims 22 and 23, the dependency of these claims from 21 does not require that a transmission shift plate be required to have a plurality of neutral positions and furthermore it is proper to use the terms "high", "low" or "super low" positions to describe any gear position as these detail likewise are not claimed so as to be included in one arrangement. Therefore, it is proper to

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refer to a single gear position as high or low in one interpretation and low or super low in another.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the arrangement of Pestotnik by providing a “beltless” transmission as taught by Hasegawa et al. and a transmission shaft extension/adapter that is releasably connectable to the transmission shaft through an opening in the transmission housing and the power takeoff point having a flange as taught by Grayson so as to provide an “adaptability” feature to the PTO arrangement and improve its versatility and furthermore, to use a shift plate arrangement as taught by Yokoyama in the sub-transmission gear selection arrangement as disclosed by Pestotnik so as to provide a position engagement and indication of the proper and desired gear position while providing a neutral position between two gear positions that may be called a high and low, or a low and super low, which is consistent with the gear positions disclosed by Pestotnik.

The combination of references teach energy that can be transferred to an external device without the removing of an auxiliary starter from the ATV's engine and broadly “accessed”.

With respect to the relation of particular gear positions, the gear positions/locations with respect to other gear positions is easily adaptable as deemed necessary by one of ordinary skill in the art.

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Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pestotnik in view Hasegawa et al. in further view of Grayson as applied to claims 18,19 and 24-29 above, and further in view of Laflamme (USPN 6,672,414).

Pestotnik in view Hasegawa et al. and Grayson does not disclose a PTO including a hydraulic pump.

Laflamme discloses an ATV having a PTO incorporating a hydraulic pump.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pestotnik in view of Grayson by providing a PTO unit including a hydraulic pump as taught by Laflamme as a hydraulic pump is a versatile and useful means of powering an external device.

With respect to the limitation that the apparatus can generate at least 3000 psi of hydraulic pressure with a volume flow of 10 gallons per minute, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide components (PTO, transmission, engine, vehicle) that would allow for the claimed operation as providing a certain size is within the scope of one of ordinary skill in the art to meet a desired performance requirement.

#### ***Allowable Subject Matter***

Claims 44,45,47 and 48 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.



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Prior Art does not show the method of converting an existing transmission arrangement as claimed.

### ***Response to Arguments***

Applicant's argument with respect to the traversal of the Restriction between the apparatus and the method of modifying the existing transmission is persuasive and Examiner has rejoined method claims 44,45,47 and 48 and examined them in this Office Action.

With respect to Applicant's argument that the vehicles of Pestotnik and Hasegawa are not compatible to teaching the use of a power take off and using a beltless transmission, Examiner disagrees and maintains the rejection. Examiner's position is that a power take off is not solely limited to tractors based on the Hasegawa reference, and a vehicle that would obviously benefit for a power takeoff would be easily determined to be provided with a power takeoff. The beltless transmission is merely a well know means of transmission and would easily be used in the vehicle of Pestotnik.

With respect to Applicant's argument that Yokoyama does not teach a neutral position that would not properly modify the other references, Examiner disagrees and maintains that the provided references teach the operation as claimed and providing a shift plate as taught by Yokoyama would be an obvious combination.

With respect to Applicant's argument that Grayson does not teach an adaptation to a crankshaft, Examiner disagrees and maintains the rejection.

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Grayson teaches a shaft having the connection as Applicant's. Providing the features for a power takeoff or other purpose is taught as transmission shafts are analogous for any transmission of power purpose.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **GEORGE D. SPISICH** whose telephone number is (571) 272-6676. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on (571) 272-6669. The

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fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GDS/  
Examiner, Art Unit 3616  
April 26, 2009

/Paul N. Dickson/  
Supervisory Patent Examiner, Art Unit 3616